IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2300 OF 2003

Aadesh Engineering Co. & Anr. ...Petitioners
Vs.
M/s. Tapasya Limes & Ors. ...Respondents

Mr A.G. Damale for the Petitioners.

CORAM : D. B. BHOSALE, J.
DATE : NOVEMBER 29, 2005.

P.C.:

1. This Petition is directed against the order dated 20.11.1996 passed on the Application (Exhibit 10) filed by the Respondent-Plaintiff under Order XXXVIII Rule 5 of the Code of Civil Procedure. That Application was filed in the Special Civil Suit No. 744 of 1996. The Respondent-Plaintiff had made following prayers in the Application Exhibit 10:

I. Amount as stated in para 5(a) of this Application payable by Sugar Factory to Defendant No.1 may please be attached.

II. Amount as stated in para 6(a),(b),(c) and (d) of this Application payable by Sugar Factory to Defendant No.1 may please be attached.

2. The Trial Court passed the following order on

20.11.1996 on the Application Exhibit 10:

1) Defendant Nos.1 and 6 each is directed to furnish the security for amount of Rs.3,00,000/- with solvent sureties in like amount on or before 30.11.1996.

2) Inform Defendant Nos.1 and 6 accordingly.

3) Correspondence be made with Godavari Sugar Factory, Pathri; Purna Sugar Factory, Basmatnagar; Siddheshwar Sugar Factory, Sillod, calling their verification report whether they have to pay the respective amounts to Defendant No.1 and Defendant No.6, as mentioned at Para 5 and 6 of Exhibit 10.

4) Defendant Nos.1 and 6 further directed that in case they fail to furnish security on 30.11.1996 as mentioned above, then Court may proceed to attach the Bills to be drawn by them for Sugar Factories mentioned at Application Exhibit 10 as well as to attach their immovable properties situated at Pune City, mentioned in Application Exhibit 5.

5) E.P.S.B. allowed.

6) Issue notice to Defendants accordingly.

That order was challenged by way of Civil Revision Application No.26 of 1997 in this Court on which while issuing rule on 13.01.1997 the following order was passed:

> "Rule. The impugned Order dated 20.11.1996 is stayed so far as Petitioner is concerned.
>
> It is accordingly ordered that the Order dated 20.11.1996 passed by your Court below Exhibit 5 and 10 in Special Civil Suit No.744 of 1994 so far as Petitioner is concerned be and the same is hereby stayed pending the hearing and final disposal of the aforesaid Civil Revision Application."

3. The Civil Revision Application was however, dismissed as not tenable vide the order dated 28.11.2002 and hence, the Petitioners- Defendant Nos.2 and 6 filed instant Writ Petition challenging the Order dated 20.11.1996. While issuing rule on the Writ Petition this Court on 08.04.2003 granted

ad-interim relief in terms of prayer clause "c". While granting interim relief it was made clear that the stay would apply only qua the Petitioners. It is thus clear that the order dated 20.11.1996 is not operating against the Petitioner since 13.01.1997.

4. Mr. Damle, learned Counsel appearing for the Petitioner fairly stated that he has no instructions as to whether the suit is still pending. Keeping that in view and considering that the interim order, as aforestated is operating since January 1997, in my opinion, the interest of justice would be met by following order:

: O R D E R :

i) The Trial Court shall decide the Special Civil Suit No.744 of 1996, if not disposed of already, as expeditiously as possible and preferably within a period of one year from the date of receipt of this order.

ii) The interim order passed by this Court on 08.04.2003 shall remain operative till the disposal of the suit. However, this order shall not preclude the Plaintiff from seeking appropriate order, if so advised against the

original Defendant Nos.1 and 3 to 5 pending disposal of the suit.

iii) The Trial Court shall decide the suit on merits in accordance with law and uninfluenced by the orders passed in the proceedings arising from Application Exhibit 10.

iv) The Writ Petition is disposed of.

JUDGE